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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 789.

THE UNITED STATES, APPELLANTS,

vs.

JOSEPH S. FARDEN.

APPEAL FROM THE COURT OF CLAIMS.

FILED SEPTEMBER 28, 1878.

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1 United States Court of Claims.

JOSEPH S. FARDEN
vs.
THE UNITED STATES. } No. 11372.

I.—*Petition. Filed April* 8, 1876.—*J. R.*

To the honorable judges of this court:

Your petitioner respectfully represents that on the 23d day of September, A. D. 1873, he was deputy collector of Francis Widmer, the then collector of internal revenue for the second district of Alabama, upon which day the Secretary of the Treasury, through the Commissioner of Internal Revenue, John W. Douglass, and by direction of the President of the United States, acting under the authority of the act entitled "An act to amend an act regulating the tenure of certain civil offices," approved April 5, 1869 (16 Stats., p. 6), suspended said Francis Widmer, and your petitioner was designated to perform the duties of said office, and did perform the duties thereof from said 23d day of September, A. D. 1873, to the 10th day of December, A. D. 1873, when your petitioner turned the same over to P. D. Barker, who had been confirmed by the Senate; said Francis Widmer died on the 15th day of October, A. D. 1873.

Your petitioner further represents that the accounting officers of the Treasury have neglected and refused to pay your petitioner his salary as acting collector from the time of his taking possession of said office, September 23, 1873, up to the death of said Widmer, October 15, 1873, but have only paid him his salary as deputy collector for said time.

Your petitioner further represents that the salary allowed to the collector of said district, under the Secretary of the Treasury's order, dated July 26, 1873, was $3,000 per annum, and the amount paid to him for said period was at the rate of $1,500 per annum, leaving still due to your petitioner on said account the amount of $89.67.

2 Your petitioner further represents that he held said office of acting collector of the second district of Alabama until and including the 9th day of December, A. D. 1873, and his successor took possession of said office on the 10th day of December, A. D. 1873.

Your petitioner further represents that he has only been paid up to and including November 30, 1873, and has not been paid for said nine days in December, 1873, or any part thereof, and that the accounting officers of the Treasury refuse to pay him for any part of the said nine days; wherefore your petitioner claims $73.38.

And your petitioner further shows that no person is owner of or interested in this claim excepting himself, and that his post-office address is Montgomery, Alabama; that he has at all times borne true faith and allegiance to the United States Government; that he is a citizen thereof, and that he has not in any way voluntarily aided or abetted or given aid and encouragement to the rebellion against the Government of the United States.

Your petitioner claims $163.05 as due him from the United States; and your petitioner will ever pray.

J. S. FARDEN.

I. G. KIMBALL,
Solicitor, Washington, D. C.

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Joseph S. Farden, claimant in the above petition, being duly sworn, deposes and says that no assignment or transfer of said claim, or any

part thereof or interest therein, has been made; that said claimant is justly entitled to the amount claimed from the United States, after allowing all just credits and offsets, and that he believes the facts stated in said petition are true.

J. S. FARDEN.

Subscribed and sworn to before me this eighth day of April, A. D. 1876.

[SEAL.] JOHN W. CORSON,
Notary Public.

3 II.—*Traverse.—Filed April* 13, 1876.

And now comes the Attorney-General, on behalf of the Untited States, and makes answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of one hundred and sixty-three dollars and five cents, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, denies the said allegation.

THOMAS SIMONS,
Assistant Attorney-General.

4 III.—*Findings of fact and conclusion of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. On the 23d day of September, 1873, the claimant was deputy collector of Francis Widner, then collector of internal revenue for the second district of Alabama, when said Widner was suspended from office by K. R. Cobb, a supervisor of internal revenue, for fraud, and his action reported to the Commissioner.

II. The Commissioner thereupon sent the following telegram to J. C. Lotz, a revenue agent, and the order therein contained was immediately complied with:

"WASHINGTON, *September* 23, 1873.

"J. C. LOTZ, *Montgomery, Alabama:*

"The Secretary will designate Joseph S. Farden as acting collector from this date. Put him in possession of the office.

"J. W. DOUGLASS,
"*Commissioner.*"

And thereafter the Secretary of the Treasury issued the following order:

"TREASURY DEPARTMENT,
"*Washington, D. C., September* 26, 1873.

"SIR: Under the provisions of the 40th section act of June 30th, 1864, as amended by the 1st section act of March 3rd, 1865, you are hereby directed to perform the duties of the office of collector of internal revenue for the 2nd district of Alabama, vice Francis Widner, suspended.

"This order will take effect from the 23rd inst., and will continue in force until some person shall have been designated or appointed to the office and duly qualified according to law.

"You will receive this through the Commissioner of Internal Revenue, who is hereby directed to give you the necessary instruction with reference to the performance of your duties as prescribed by law.

"I am, very respectfully,

"W'M A. RICHARDSON,
"*Secretary.*

"Mr. JOSEPH S. FARDEN,
"*Dep'ty Collector, &c., Montgomery, Ala.*"

III. Said Widner died October 16, 1873, and on the 9th day of November, 1873, P. D. Barker was appointed and commissioned as collector of said district, and took the oath of office and gave the bond required on the 1st day of December, 1873.

The following notice was sent to claimant by the Commissioner of Internal Revenue, and on the 10th day of December, 1873, and not before, said Barker took possession of the office, and all books, papers and property pertaining thereto were then turned over to him:

"WASHINGTON, *November 25th*, 1873.

"SIR: Prelate D. Barker having been appointed collector of internal revenue for the second district of Alabama, and having duly qualified as such collector, I have to direct you to turn over and deliver to him all books, papers, and property pertaining to collector's office of said district whenever he shall present himself and request you to do so.

"Very respectfully,

"J. W. DOUGLASS,
"*Commissioner.*

"JOSEPH S. FARDEN, Esq.,
"*Acting Collector 2d Dist., Montgomery, Ala.*"

IV. The claimant performed the duties of collector of said district as such acting collector from September 23 to December 9, 1873, inclusive, under said orders set forth in the second finding.

V. The compensation fixed by the Secretary of the Treasury, in lieu of the salary and commissions prescribed by law, for the personal salary of the collector of said district, was $3,000 a year, and of the deputy collector $1,500 a year.

VI. For the time from the 23d of September to the 15th of October, inclusive, the claimant has been paid $89.67, the compensation fixed for deputy collector, and no more; for the time between October 15 and November 30, 1873, inclusive, he has been paid the full compensation of collector; and for the first nine days in December he has been paid nothing.

Conclusion of law.

The claimant is entitled to recover one hundred and sixty-three dollars and five cents, on the grounds set forth in the opinion of the court.

IV.—*Opinion of the court.*

RICHARDSON, J., delivered the opinion of the court:

The claimant was a deputy collector of internal revenue for the second district of Alabama, and as such acted as collector of said district from the 23d of September to the 9th of December, 1873, inclusive, and

now seeks to recover the compensation allowed by law and the order of the Secretary of the Treasury to the latter office, by virtue of the acts of 1869, ch. 57, § 1 (15 Stat., 282), and 1870, ch. 187 (16 Stat., 179), now Revised Statutes, section 3150, where, in the revision, the provision stands thus: "Any deputy collector who has performed or may perform, under authority of law, the duties of any collector in consequence of a vacancy in the office of said collector, shall be entitled to receive the salary and commissions allowed by law to such collector, or the allowance in lieu of said salary and commissions allowed by the Secretary of the Treasury to such collector." * * *

The right of the claimant to recover as claimed depends upon whether or not he performed the duties under the authority of law, and there was a vacancy in the office of collector within the meaning of that provision. His authority is not denied by the defendants, but they allege that there was no vacancy except for part of the time, for which he has been paid, and for that he makes no claim.

There are only two cases in which a deputy can act as collector: one, "in case of the sickness of a collector or of his temporary disability to discharge his duties," when the duties of his office may be devolved by him upon one of his deputies; the other, where there is a vacancy in the office, in which case the senior deputy acts by authority of the statute, unless the Secretary of the Treasury directs that the duties be performed by such other of the deputies as he may designate. (R. S., § 3149.)

6 In the present case the collector was suspended for fraud by the supervisor of internal revenue, who made report thereof to the Commissioner, for his action thereon, as required by statute provisions, now incorporated into Revised Statutes, § 3163. What is the legal effect of such suspension in all respects is not well defined, and whether or not the collector may not be still in office afterwards, for some purposes, though under disabilities to perform the duties, may not be free from doubt.

It is clear, however, that in this case all parties acted upon the theory of an existing vacancy. The duties of the office were not devolved upon the claimant as deputy by the collector himself, as in case of disability, but were cast upon him by the Secretary of the Treasury as in case of vacancy. The Commissioner's action upon the supervisor's report of suspension was to give direction that the claimant be put in possession of the office, which was immediately complied with, and to notify the claimant that he would be designated by the Secretary of the Treasury to perform the duties of collector, and he was so designated at once.

It must be observed that the Secretary of the Treasury has no such power of designation by statute, except in case of vacancy, when it appears to him that the interest of the government so requires. The Secretary recognized a vacancy, by referring in his order expressly to the statutes giving him authority in such case, and, moreover, specifically declared that the collector was suspended. Under the tenure of office act (now Revised Statutes, § 1768), the President had the power at that time, September, 1873, which was during the recess of the Senate, to suspend the collector at his pleasure until the end of the next session of the Senate, and the act of the head of a department is presumed to be the act of the President. (Wilcox vs. Johnson, 13 Pet., 498.)

The Assistant Attorney-General relies upon the closing paragraph of the act of 1869, ch. 57, § 1 (15 Stat., 282), where the existing provision was first made for paying to deputies the compensation of collectors when performing the duties of the latter officers in certain cases, which is as follows: "But no such payment shall in any case be made when

the collector has received, or is entitled to receive, compensation for services rendered during the same period of time." The next year, by act of 1870, ch. 187 (16 Stat., 170), Congress declared the "true intent and meaning" of the former act, and while repeating all other provisions therein contained, omitted the clause which we have set forth, and which is now relied upon by the defendants; and in revising the Statutes, the later act is incorporated into the Revised Statutes as containing all that remained in force on the subject, and the former provision or limitation is wholly omitted. (R. S., § 3150.) This is significant, as indicating by legislative construction and implication that there may be cases in which a deputy may perform the duties of collector and be entitled to compensation therefor, while, under some circumstances, the collector himself might also receive pay for services, actual or constructive, during the same period of time. Under the tenure of office law, the suspended officer is expressly excluded from the right to receive the emoluments of the office during suspension; but no such prohibition is made in respect to a collector suspended by a supervisor of internal revenue, and we may well understand why he should not be deprived of his salary if it should prove upon examination by the Commissioner that the charges against him were unfounded and the suspension by the supervisor unjust, and he should finally be restored to his office. And there may be other circumstances entitling him to pay while under suspension as just perhaps as the case we mention. It would seem that the act declaring the
7 true intent and meaning of the act of 1869, omitting, as it did, the restriction in the closing paragraph of the first section, might have been passed to meet precisely such a case as this. At any rate, the restriction no longer stands in the way of the claimant's right to recover.

On the whole, we are of opinion that the suspension by the supervisor of internal revenue, and the action of the Secretary of the Treasury, caused such a vacancy within the meaning of the statute as entitles the present claimant, designated as he was, to the compensation allowed to the collector while performing the duties of that officer.

We say within the meaning of the statute, because when that can be satisfactorily gathered from the whole language of an act or section, taken in connection with the manifest object designed to be accomplished, it is not necessary to give to every word its exact signification as an independent word, when it would be inconsistent with other words and other parts of the same statute. The first and controlling rule in the construction of statutes is to ascertain what the legislature intended, as indicated by all the provisions on the same subject-matter, harmoniously construed as far as possible, and single words must sometimes yield their restricted meaning to a more general signification and greater comprehensiveness, if necessary to carry out the manifest will of the law-making power, which, in the section now under consideration, seems to have been to give to him who actually performed the duties and incurred the responsibilities of the office of collector the emoluments attached thereto. (Wilcox vs. United States, 12 Ct. Cl. R., 495; affirmed on appeal, 95 U. S., 661.)

There is another branch of the case relating to the claim for services during the first nine days in December, which differs somewhat from that which we have thus far been considering.

After the claimant was put in possession of the collector's office and had been designated by the Secretary of the Treasury to perform the duties of collector, Widner, the suspended collector, of whom the claimant was deputy by his appointment (R. S., § 3148), died October 16, 1873.

Subsequently, P. D. Barker was appointed and commissioned as collector of said district November 9, and gave bond and took the oath of office December 1, 1873. But he did not enter upon the duties, take possession of the office, or relieve the claimant until December 10, 1873, and the claimant continued to discharge the duties to which he had been thus assigned until the latter date.

During those nine days in December, the claimant was not the deputy of the newly appointed collector, Barker, and so could not have performed his duties by reason of their having been, in the language of the statute, devolved upon him by the collector, but he acted under the designation and direction of the Secretary of the Treasury, upon the order of that officer of the previous September, as the findings show. The vacancy then, within the meaning of the statute and as understood by the Treasury Department, still continued, or the claimant could not have acted at all, his only authority being his designation by the Secretary of the Treasury on account of a vacancy in the office of collector.

The newly appointed collector was, no doubt, in office for some purposes, but until he entered himself upon the discharge of his duties and appointed his own deputies, the acting deputy appointed by his predecessor, and acting under authority derived from the Secretary of the Treasury, would not be his deputy; and he would not be responsible for the money collected and other official acts by the acting incumbent. So in that regard, as to responsibility at least, there was practically a vacancy in the office of collector during those nine days in December.

8 It may be that the newly appointed collector was entitled to the salary of the office from the time he gave bonds and took the official oath, but that would not preclude the present claimant from a right to the same amount of compensation during the time he thus performed all the duties and incurred all the responsibilities. The Revised Statutes enact that they embrace the statutes of the United States, of a general and permanent nature, in force December 1, 1873, which was the first of those nine days for which the claimant seeks to recover compensation, and, as we have pointed out, the restriction contained in the act of 1869 and omitted from the act of 1870 was not incorporated therein.

The authority of the claimant to act as collector was the same during the time of the suspension of the first collector, the time between the death of that officer and the appointment of his successor, and the time from the appointment of the successor until his entry upon his duties, and was founded upon one designation only made by the Secretary of the Treasury as in case of a vacancy. The claimant's status with reference to his duties did not change during the whole period of the time of his services. He alone was responsible for the performance of the duties of the office, for the first collector, suspended by law, could not be held liable for the acts of another put in his place against his will by higher authority; and the second collector could not be liable until he took possession and appointed his own deputy.

If the claimant performed the duties under authority of law, as seems to have been conceded on all sides, he is "entitled to receive the salary and commission allowed by law to such collector." (R. S., § 3150.)

The judgment of the court is that the claimant recover the sum of $163.05, which is the compensation of collector from September 23 to December 9, 1873, inclusive, less the amount which has been paid to him.

NOTT, J., now absent, was present at the trial of this case, took part in the conference thereat, and concurs in this decision.

9 V.—*Final judgment.*

At a Court of Claims held at the Capitol, in the city of Washington, on the 20th day of May, A. D. 1878, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Joseph S. Farden, claimant, do have and recover of and from the United States the sum of one hundred and sixty-three dollars and five cents.

10 VI.—*Application for appeal and order allowing same.*

From the judgment rendered in the above-entitled cause on May 20, 1878, in favor of claimant, the defendants, by their Attorney-General, on the 17th day of August, 1878, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Ass't Attorney-General.

Filed August 17, 1878.

AT CHAMBERS.

Allowed.

C. D. DRAKE,
Chief Justice.

11 *In the Court of Claims.*

JOSEPH S. FARDEN
vs.
THE UNITED STATES. } No. 11372.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 25th day of September, 1878.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover :) No. 789. The United States, appellants, vs. Joseph S. Farden. Court of Claims. Filed 28th September, 1878.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

THE UNITED STATES, APPELLANTS,
vs.
JOSEPH S. FARDEN. } No. 789.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

THE UNITED STATES, APPELLANTS,
vs.
JOSEPH S. FARDEN. } No. 789.

BRIEF FOR THE UNITED STATES.

The facts in this case are stated upon folios 4 and 5 of the record. They are: that from September 23 to December 9, 1873, the claimant was deputy to one Widmer a collector of internal revenue in Alabama; that on the former of those days Widmer was *suspended* by a supervisor of internal revenue *for fraud;* that he died on the 16th of October, and that one Barker was appointed to succeed him, and gave bond on the 1st of December but did not take possession of the books and office until the 10th; that the claimant acted as collector during all this time, being authorized by the Secretary of the Treasury; that for the period between October 16 and December 1 the claimant received pay *as collector*, and for the rest of the time only *as deputy*. The suit demands pay *as collector* during the latter period. The difference between what he asks and what he has received is only $163.05, but the question which underlies the claim, *i. e.* whether

during the period of service in question there was a *vacancy* in the office of collector, within the meaning of the act of March 1, 1869, quoted below, is an important one, and has occasioned the appeal.

I assign for error the decision of the court below, that under the facts found there was such vacancy.

The statutes which bear upon the question will be found in *The Treasury Compilation* of 1873, pp. 8 and 9, and are as follows:

That in case of the sickness or temporary disability of a collector to discharge such of his duties as cannot under existing laws be discharged by a deputy, they may be devolved by him upon one of his deputies; and for the official acts and defaults of such deputy the collector and his sureties shall be held responsible to the United States. (Act of June 30, 1864, sec. 39.)

That in case of a vacancy occurring in the office of collector, by reason of death or any other cause, the deputies of such collector shall continue to act until his successor is appointed; and the deputy of such collector longest in service at the time immediately preceding shall, until a successor is appointed, discharge all the duties of said collector; and for the official acts and defaults of such deputy a remedy shall be had on the official bond of the collector, as in other cases; and of two or more deputy collectors appointed on the same day, the one residing nearest the residence of the collector at the time of his death, resignation, or removal, shall discharge the said duties until the appointment of a successor: *Provided, That in case it shall appear to the Secretary of the Treasury that the interest of the government shall so require, he may, by his order, direct said duties to be performed by such other one of the said deputies as he may in such order designate.* And any bond or security taken from a deputy by such collector pursuant to this act shall be available to his legal representatives and sureties to indemnify them for loss or damage accruing from any act of the deputy so continuing or succeeding to the duties of such collector. (Act of June 30, 1864, sec. 40, amended [see italics] by, (1) act of March 2, 1867, sec. 9, and, (2) act of March 3, 1865, sec. 1.)

That any deputy collector of internal revenue who has performed, or may hereafter perform, under authority or requirement of law, the duties of collector of internal revenue, *in consequence of any vacancy in the office of such collector*, shall be entitled to and receive so much of the same pay and compensation as is provided by law for such collector; but no such payment shall in any case be made when the collector has received, or is entitled to receive, compensation for services rendered during the same period of time. (Act of March 2, 1869, sec. 1.)

That the true intent and meaning of an act approved March 1, 1869, entitled "An act to allow deputy collectors of internal revenue acting as collectors the pay of collectors, and for other purposes," is as follows, to wit: That any deputy collector of internal revenue who has performed, or may hereafter perform, under authority of law, the duties of collector of internal revenue, in consequence of any vacancy in the office of said collector, shall be entitled to, and shall receive, the salary and commissions allowed by law to such collector, or the allowance in lieu of said salary and commissions allowed by the Secretary of the Treasury to such collector, and that the Secretary of the Treasury is authorized to make to the said deputy collector such allowance in lieu of salary and commissions as he would by law be authorized to make to said collector. And said deputy collector shall not be debarred from receiving said salary and commissions, or allowances in lieu thereof, by reason of the holding of another Federal office by said collector during the time for which said deputy collector acts as collector: *Provided*, That all payments to said deputy collector shall be upon duly audited vouchers. (Act of July 1, 1870.)

That from and after the passage of this act no assessor or collector shall be detailed or authorized to discharge any duty imposed by law upon any other collector or assessor, but a supervisor of internal revenue may, within his territorial district, suspend any collector or assessor for fraud or gross neglect of duty, or abuse of power, and shall immediately report his action to the Commissioner of Internal Revenue with his reasons therefor in writing, who shall thereupon take such further action as he may deem proper. (Act of July 20, 1868, sec 51.)

I submit that the position of a collector *suspended* under the section last above quoted is not that of "*disa-*

bility," within the section first quoted; and therefore that a collector so suspended is not authorized to *devolve his duties* upon some one selected by himself. It would be singular if an officer *suspended for fraud* should be so authorized; but the technical reason why he is not is, that the statute does not so intend, for so soon as suspended he becomes disabled in law from performing any function of his office, the *devolution* in question being such a function. The *disability* spoken of in the first section is one of the nature of sickness, *i. e.*, a *physical* disability, or at all events one that does not touch the collector's capacity or integrity.

Therefore there is nothing to the purpose of the judgment below in the circumstance that this case was not treated by the Treasury Department as a disability within the first section above.

Again, I submit that upon the face of the papers evidencing the action of the Treasury Department in respect to the suspension reported by the supervisor, it appears that the claimant was addressed and treated as being still a deputy of Widmer, and that such action pursues and is warranted by the provisions of the section last above quoted, viz, that upon a report of the suspension therein authorized, the Commissioner of Internal Revenue shall *take such further action as he may deem proper.* The action taken appears to have been—consultation with the Secretary, who thereupon (treating Widmer as still in office, and the claimant as his deputy) *directed Farden* to perform the duties of collector, &c., *until some person should be appointed to this office;* presuming, apparently, that the *suspension* might be followed by a *vacancy.* It seems that such action is warranted by the section cited, and, consequently, *tha t the parties did*

not act as if there were a vacancy, allowing what seems inadmissible except for argument's sake, that such action could control the meaning of the statute.

The question whether a *suspension* under the last section above creates a *vacancy* within the meaning of the two sections immediately preceding, seems, therefore, in the present case to be *unembarrassed* by any cotemporaneous dealings of the officers of the government.

The burden of showing that the word "vacancy" includes *what is not a vacancy in the ordinary sense of the word* (see State, &c., *v.* Herron, 24 Louisiana Ann., 432), devolves, of course, upon the claimant.

The case is one in which those who drew the provision for paying to deputies under certain circumstances the compensation of collectors would probably be advertent to the fact that by law (see first section above) deputies sometimes perform the duties and incur the responsibilities of collectors although there is no vacancy in the office; *ex. gr.*, that if a collector be sick or absent, some deputy performs his duties. Did Congress wish to include such a case? If so, all that was necessary was to leave out of the provision the above words, "*in consequence of any vacancy in the office of such collector.*"

In the absence of those words deputies performing collectors' duties in any case of disability of their principal would have been entitled to collectors' pay. And if Congress had framed the provision upon a consideration of the deputy's merits alone, there seems no reason why this should not be so. It makes no difference to the deputy whether any six months (say) during which he has acted as collector were six months of disability of the latter because of *sickness*, or because of *absence* or

of *suspension for fraud*, or were six months of *vacancy* because of death or any other cause. In either case the care and skill and responsibility of the deputy, and his merits toward the government would be the same.

However, if Congress thought that the provision should be so worded as to prevent *double pay* for the same period, there is reason in the addition of the above qualification. *Congress may have considered that the interests of principal and deputy are so connected as to require the latter to act for the former in any case of mere disability which does not take away compensation.* It is of no concern to the deputy *why* such disability arises. His duty to his principal is that of good will and reasonable assistance. Whatever he does so long as his principal is in office is only *assistance. A part of the consideration for his labor is the compensation to his principal as well as that to himself.* And under whatever circumstances the law continues compensation to his principal *there*, technically, there is *no consideration* arising out of the same services for an assumpsit of *compensation as collector* to himself. He is paid (as regards the collectorship) when his principal is paid.

Such seems to be a part of the law of the connection between principal and deputy. I submit that it goes to show that the insertion and precise wording of the above clause (as, indeed, is otherwise *to be presumed*) was *deliberate*, and is to be construed according to the *ordinary sense* of its words; *i. e.*, when Congress said "in consequence of any *vacancy*," they did not include *disability because of a suspension for fraud*, even if such suspension were followed by dismissal, much less if followed by a vindication and restoration (and both cases are included, or neither), which latter result may have been

prevented in this case by the death of Widmer within a month.

In this connection, I ask attention to the wording of this section in another respect, as well also of that of the section which immediately follows it above, "*to define its true intent and meaning.*"

The former section, after providing for payment to the deputy, adds *that no such payment shall be made when the collector has received or is entitled to compensation for services during the same time.* The latter defines the true intent of the former by substantially repeating it down to the clause above italicised, and then substituting for such clause one declaring that the deputy *shall not be debarred from such pay by reason that his principal during such time holds another Federal office;* and then it adds a clause requiring *duly audited vouchers* for any payment to the deputy.

By comparing the two sections, it seems—

(1.) That a remarkable clerical error had occurred, if the intention of Congress in passing the former had been to enact the latter.

(2.) That if *vacancy* in the former had its usual meaning, the clause *omitted* as above was *superfluous;* for in a case of *vacancy* there could of course be no collector entitled to receive compensation during the same period of time.

(3.) In suppressing such clause, Congress probably adverted to the circumstance that it was superfluous.

(4.) In framing the clause substituted in the latter section, Congress intimates that in any case where a collector is entitled to compensation *qua* collector, the deputy is by the preceding words barred therefrom, for

it takes pains to provide that the occupation of *some other office* by the collector for the same period shall not be a bar, *i. e.*, *ex gr.* if the collector accept some other incompatible office, the vacancy occasioned by such virtual resignation [which imposes the duties of collector upon the deputy, see second section above] shall not because of the words in the omitted clause "when the *collector* has received compensation for services," &c., prevent the deputy from being paid.

[I submit that the *example* put above is appropriate, and shows what Congress intended, although the *second* provision is not free from the inadvertency which marks the first, inasmuch as, in effect, it refers to and explains *in words* a clause the difficulty of which it had already avoided apparently by *suppression*. Still in any ordinary sense the words, by the rule "*expressio unius*," &c., show the intention of the legislature to be that the deputy shall not be paid in any case in which his principal is paid as *such*.]

(5.) It seems that the proviso in the latter section is to the same effect; indicating that payment is not to be based upon a discretionary substitution of a deputy because of *disability*, which is a large word; but that a *vacancy* must be shown to the satisfaction of the auditing officers. The payment at the Treasury is not according to the methods adopted for ordinary salaries, but is special, and accompanied by a *record* of the circumstances which justify it.

I have assumed in what goes before that Widmer was entitled to his salary until his death. This seems not to be disputed; and is taken for granted in the opinion of the learned court below.

As for the period *after Barker's qualification as Widmer's successor*, during which the claimant continued to perform the duties of collector, I submit, in connection with what is said above, that there is nothing in the above provisions to authorize it; and those provisions are all, as I understand, that are applicable.

S. F. PHILLIPS,
Solicitor-General.

Supreme Court of the United States.

No. 789.

OCTOBER TERM, 1878.

THE UNITED STATES

vs.

JOSEPH S. FARDEN.

BRIEF FOR APPELLEE.

I. G. KIMBALL,
Attorney for Appellee.

Caxton Press, 1008 F St.

Supreme Court of the United States.

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OCTOBER TERM, 1878.

THE UNITED STATES
v.
JOSEPH S. FARDEN.

BRIEF FOR APPELLEE.

Statement of the Case.

Joseph S. Farden was deputy collector of internal revenue under Francis Widmer, collector 2d district Alabama, and was designated by the Secretary of the Treasury as acting collector in place of Francis Widmer, who had been suspended by the Supervisor of Internal Revenue, and Farden performed the duties as collector of said district from September 23d to December 9th, 1873, both inclusive. As acting collector he was entitled to compensation at the rate of $3,000 per annum, but received pay only at the rate of $1,500 per annum from September 23d to October 16th, 1873, upon which latter date Widmer died. From the date of Widmer's death up to November 30th, 1873, he received the compensation to which he was entitled by law, and no claim is made for that period.

The successor of acting collector Farden gave bond and took

the oath of office December 1st, 1873, but did not enter upon the discharge of the duties of the office until December 10th, 1873, but the Treasury Department has refused to pay Farden any salary or compensation whatever for said nine days in December.

The Court of Claims has allowed Farden the balance of the compensation due him, to wit: $89.67 from September 23d to October 16, 1873, and $73.38 for the nine days during which he was acting collector in December, 1873, a total of $163.05, from which decree the United States took an appeal to this court.

Argument.

This case must be considered in two parts: First, the time from September 23d to October 16th, 1873; and, second, the nine days in December, 1873.

First. It was claimed by the accounting officers that Farden was not entitled to the compensation as acting collector until after Widmer's death, because there was no vacancy in the office of collector, but only a suspension before that time, and that Sec. 1, Act Mar. 1, 1869, (15 Stats., 282,) and the act of July 1st, 1870, (16 Stats., 179,) gave the emoluments of the office of collector, to the deputy acting as collector, only in case of a vacancy, and construed the word vacancy to mean, that the deputy collector acting as collector was only entitled to the emoluments of the office when there was no collector, and that he was not entitled where for any reason the collector was suspended from performing the duties of the office.

An examination of the Act of March 1st, 1869, (15 Stats., 282,) will show conclusively that Congress, when it passed said act and used the word vacancy, had no intention of limiting payment thereunder to cases where, in the most strict interpretation, there was a vacancy. The language of the statute is: "That any deputy collector of internal revenue who has performed, or may hereafter perform, under authority or requirement of law, the duties of collector of internal revenue, in consequence of any vacancy in the office of such collector, shall be entitled to, and receive so much of the same, pay and

"compensation as is provided by law for such collector; but "no such payment shall in any case be made when the col- "lector has received, or is entitled to receive, compensation for "services rendered during the same period of time."

If Congress in said act used the word "vacancy" in the sense claimed by the accounting officers, then when such a vacancy existed there would be no "collector," the acting collector would be the only man who could claim the emoluments of the office, and Congress would not have put in the restricting clause at the close of the section quoted, because, if such a vacancy was meant, as is contended for, there would be no "collector" who could have "received" or be "entitled to receive "compensation for services rendered during the same period "of time." It is perfectly apparent that Congress did intend to pay an acting collector under precisely the circumstances of Farden's case.

An examination of the Act of July 1st, 1870, (16 Stats., 179,) "An Act to define" the intent of the Act of March 1st, 1869, will show that Congress did not intend that a deputy collector, acting as collector, should be paid only in case of a vacancy. The language used in the last clause of said act before the proviso is: "And said deputy collector shall not be debarred from re- "ceiving said salary and commissions, or allowance in lieu "thereof, by reason of the holding of another federal office by "said collector during the time for which said deputy acts as "collector." In the last named act the restrictive clause is omitted, and payment thereunder can be made even if the collector "has received or is entitled to receive compensation for "services rendered during the same period of time," but Congress clearly states that there may be such a vacancy as contemplated by them when they passed the act, and yet the collector, in whose stead the deputy collector is acting, be living and entitled to be called by the name of "collector."

Where the intention of the legislature can be learned, it is the duty of the courts to cosntrue the statute accordiug to that intention.

But for the purposes of the argument, conceding that Congress did intend that a vacancy should exist to entitle the deputy ac-

ting as collector to the emoluments of the office, I claim that we are then entitled, as is very clearly shown in the unanimous opinion of the Court of Claims in this case, delivered by Judge Richardson, in which opinion that side of the question is so clearly stated that I quote it at length:

"In the present case the collector was suspended for fraud by the supervisor of internal revenue, who made report thereof to the Commissioner, for his action thereon, as required by statute provisions, now incorporated into Revised Statutes, § 3163. What is the legal effect of such suspension in all respects is not well defined, and whether or not the collector may not be still in office afterwards, for some purposes, though under disabilities to perform the duties, may not be free from doubt.

"It is clear, however, that in this case all parties acted upon the theory of an existing vacancy. The duties of the office were not devolved upon the claimant as deputy by the collector himself, as in case of disability, but were cast upon him by the Secretary of the Treasury as in case of vacancy. The Commissioner's action upon the supervisor's report of suspension was to give direction that the claimant be put in possession of the office, which was immediately complied with, and to notify the claimant that he would be designated by the Secretary of the Treasury to perform the duties of collector, and he was so designated at once.

"It must be observed that the Secretary of the Treasury has no such power of designation by statute, except in case of vacancy, when it appears to him that the interest of the government so requires. The Secretary recognized a vacancy, by referring in his order expressly to the statutes giving him authority in such case, and, moreover, specifically declared that the collector was suspended. Under the tenure of office act (now Revised Statutes, § 1768), the President had the power at that time, September, 1873, which was during the recess of the Senate, to suspend the collector at his pleasure until the end of the next session of the Senate, and the act of the head of a department is presumed to be the act of the President. (Wilcox vs. Johnson, 13 Pet. 498.)

"The Assistant Attorney-General relies upon the closing paragraph of the act of 1869, ch. 57, § 1 (15 Stats., 282), where the existing provision was first made for paying to deputies the compensation of collectors when performing the duties of the latter officers in certain cases, which is as follows: 'But no

such payment shall in any case be made when the collector has received, or is entitled to receive, compensation for services rendered during the same period of time.' The next year, by act of 1870, ch. 187, (16 Stats., 170), Congress declared the 'true intent and meaning' of the former act, and while repeating all other provisions therein contained, omitted the clause which we have set forth, and which is now relied upon by the defendants; and in revising the Statutes, the later act is incorporated into the Revised Statutes as containing all that remained in force on the subject, and the former provision or limitatation is wholly omitted. (R. S., § 3150.) This is significant, as indicating by legislative construction and implication that there may be cases in which a deputy may perform the duties of collector, and be entitled to compensation therefor, while, under some circumstances, the collector himself might also receive pay for services; actual or constructive, during the same period of time. Under the tenure of office law, the suspended officer is expressly excluded from the right to receive the emoluments of the office during suspension; but no such prohibition is made in respect to a collector suspended by a supervisor of internal revenue, and we may well understand why he should not be deprived of his salary if it should prove upon examination by the Commissioner that the charges against him were unfounded and the suspension by the supervisor unjust, and he should finally be restored to his office. And there may be other circumstances entitling him to pay while under suspension as just perhaps as the case we mention. It would seem that the act declaring the true intent and meaning of the act of 1869, omitting, as it did, the restriction in the closing paragraph of the first section, might have been passed to meet precisely such a case as this. At any rate, the restriction no longer stands in the way of the claimant's right to recover.

"On the whole, we are of opinion that the suspension by the supervisior of internal revenue, and the action of the Secretary of the Treasury, caused such a vacancy within the meaning of the statute as entitles the present claimant, designated as he was, to the compensation allowed to the collector while performing the duties of that officer.

"We say within the meaning of the statute, because when that can be satisfactorily gathered from the whole language of an act or section, taken in connection with the manifest object designed to be accomplished, it is not necessary to give to every word its exact signification as an independent word, when it would be inconsistent with other words and other parts of the

same statute. The first and controlling rule in the construction of statutes is to ascertain what the legislature intended, as indicated by all the provisions on the same subject-matter, harmonously construed as far as possible, and single words must sometimes yield their restricted meaning to a more general signification and greater comprehensiveness, if necessary to carry out the manifest will of the law-making power, which, in the section now under consideration, seems to have been to give to him who actually performed the duties and incurred the responsibilities of the office of collector the emoluments attached thereto. (Wilcox vs. United States, 12 Ct. Cl. R., 495; affirmed on appeal, 95 U. S., 661.)"

Second. As to the second point: The findings of fact of the Court of Claims settles the following points, to wit: That Farden "performed the duties of collector of said district as such "acting collector, from September 23d to December 9th, 1873, "inclusive, under said orders, set forth in the second finding." (Fourth finding.) And second, that Farden's successor, "on "the 10th day of December, 1873, and not before," "took pos- "session of the office, and all books, papers, and property per- "taining thereto, were then turned over to him." (Third finding.)

If Farden, as acting collector, performed the duties of the office during the first nine days of December, 1873, Widmer being dead, and Barker, the successor, not taking possession of the office until December 10th, 1873, why should not Farden be paid therefor?

It cannot be claimed that Farden was not entitled to be paid after November 30th, 1873, because his successor had, on December 1st, taken the oath of office and given bond. That would not be sufficient to entitle the successor to the emoluments of the office. He must, in addition to the oath of office, and the giving of the bond, perform the duties of the office. During the nine days in December, before Barker, the successor, took possession of the office whilst Farden, as acting collector, was performing all the duties of the same, whose bond was liable for the collections made by Farden? Most assuredly not that of Barker.

The question of Farden's right to be paid for the said nine days of December is so clear and plain that it is very difficult to argue.

I beg leave to respectfully submit, for the consideration of the court, the fact that the appellee has been compelled, through the appeal of the United States, to come into this court in a case involving a very small amount; that he is not interested in the question further than the case in controversy; and therefore respectfully asks that, under the facts above stated, the United States be required to pay all the costs of this appeal.

I. G. KIMBALL,
Attorney for Appellee.